



Paper No. 7

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OFFICE OF PETITIONS

In re Application of :
Majid Syed :
Application No. 10/045,120 : DECISION ON PETITION
Filed: October 26, 2001 :
Attorney Docket No. 708034-605-004 :

This is a decision on the "Petition under 37 C.F.R. § 1.181," filed June 4, 2002. This petition is properly treated as a petition under 37 C.F.R. § 1.53(e)(2). Petitioner requests that the Office accord the above-identified application a filing date of October 26, 2001, with page 5 as a part of the original application disclosure.

Application papers in the above-identified application were filed on October 26, 2001. However, on March 15, 2002, the Office of Initial Patent Examination mailed applicant a "Notice to File Corrected Application Papers." Applicant was notified that the application papers had been accorded a filing date; however, page 5 of the specification appeared to have been omitted. In addition, applicant was required to submit claims commencing on a separate sheet and substitute drawings in compliance with 37 CFR 1.84.

In response, applicant timely filed the instant petition (and petition fee). Applicant contends that page 5 of the specification was deposited in the United States Patent and Trademark Office with the nonprovisional application papers on October 26, 2001. In support thereof, applicant submitted *inter alia* a copy of their return postcard from the USPTO. Petitioner also submitted a copy of page 5 as originally filed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the USPTO on October 26, 2001; 2) it specifically identifies the items being filed, including "43 pages of specification" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioners have shown that the items denoted, including the 43 pages of specification, were filed on October 26, 2001.

The application papers already considered received in the Office on October 26, 2001, were reviewed along with the missing page of specification submitted on petition. These papers together constitute the items described on the postcard receipt, including 43 pages of specification. Petitioner has shown that p. 5 was among the items present in the application on the date of deposit and should be included in the original application disclosure.

Accordingly, the petition is GRANTED.

Given the basis for granting the petition under § 1.53(e)(2), the petition fee is being refunded to Deposit Account No. 10-1202, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of October 26, 2001, using the application papers received in the Office and presently accorded that date; and page 5 of the specification resubmitted on petition filed June 4, 2002; and
- processing of the replies, claims and substitute drawings, filed June 4, 2002 in response to the "Notice to File Corrected Application Papers."

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.

Christina P. Donnell

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